

Proposed Rules Relating to Prevailing Wage Rates

Chapter DWD 290/CR04-081

Response to Legislative Council Comments

Response to comment 1. The proposed change is not based on a new understanding of statutory intent. It has long been understood by all parties familiar with the prevailing wage law that if a majority of hours worked in a particular trade in an area are by union workers, the rates in the union contract will prevail. A methodology that does not consistently result in that outcome is problematic.

The Department is not alleging that there is any evidence of legislative intent on the specific issue of the old versus the new methodology. The statutory language “hourly basic rate of pay, plus the hourly contribution” gives no guidance on whether the Department should consider the basic wage rate and the hourly contributions rate as separate figures or as the sum of the two figures. The statutory language is ambiguous, leaving the Department to develop the specific interpretation subject to legislative review under s. 227.19, Stats.

Recent dramatic increases in health insurance costs have made the current methodology of determining the prevailing wage an unforeseen yet significant issue at this time. The problem came to the Department’s attention following the determination of the prevailing wage rates based on the most recent survey period. As described in the analysis, a union agreed to a lower basic rate of pay to cover the increased cost of health insurance in the hourly contributions rate while maintaining the same total economic benefit. The new agreement was made approximately half-way through the year so the union was essentially competing against itself in the survey to determine the prevailing wage rates. The result was the rates in the union contract were not selected as the prevailing wage rates even though a majority of the hours worked in that trade in that area were by union workers. This is the issue on which the Department believes that there is legislative intent, not the specific issue of which methodology is used.

The Department affirms its position it is the intent of the prevailing wage law that if a majority of hours worked in a particular trade in an area are by union workers, the methodology used to determine the prevailing wage rates should consistently result in the determination of the prevailing wage rates as the rates in the union contract.

Response to comment 5. “Hourly contributions” is defined at s. DWD 290.01 (10).

Other comments were accepted.